

**Notice of Allowability**

<b>Application No.</b> 09/977,170	<b>Applicant(s)</b> BALMER ET AL.	
<b>Examiner</b> Justin R. Fischer	<b>Art Unit</b> 1733	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

- 1.  This communication is responsive to 11 July 2005.
- 2.  The allowed claim(s) is/are 1,2,4-8,17-22,24-27,29,40,42,44,46, and 48-55 (renumbered 1-30).
- 3.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All    b)  Some\*    c)  None    of the:
  - 1.  Certified copies of the priority documents have been received.
  - 2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

- 4.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  - 5.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
    - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
- 6.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- 1.  Notice of References Cited (PTO-892)
- 2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
- 4.  Examiner's Comment Regarding Requirement for Deposit of Biological Material
- 5.  Notice of Informal Patent Application (PTO-152)
- 6.  Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
- 7.  Examiner's Amendment/Comment
- 8.  Examiner's Statement of Reasons for Allowance
- 9.  Other \_\_\_\_\_

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## DETAILED ACTION

### *Allowable Subject Matter*

1. Claims 1, 2, 4-8, 17-22, 24-27, 29, 40, 42, 44, 46, 48, and 55 (renumbered 1-30) are allowed. The following is an examiner's statement of reasons for allowance:

The closest prior art of record is Lemoine, which, as best depicted in Figure 1, discloses the manufacture of a floor covering from a plurality of agglomerated particles, wherein said agglomerated particles are defined by multi-colored particles (1,3,5,7). In this instance, a plurality of differently colored particles are mixed and laminated into a consolidated sheet 13 and subsequently shredded to form a plurality of jaspe agglomerated particles (clusters of differently colored particles exhibiting striped or streaked appearance) deposited onto conveyor 21. The different colored particles are seen to constitute "a first particle having a first visual characteristic and a second particle having a second visual characteristic (color) different than the visual characteristic of said first particle. It is emphasized that, contrary to applicant's arguments, the language "agglomerated particles" is not seen to define over the particles of Lemoine. In this instance, however, Lemoine teaches that the above noted agglomerated particles are formed by shredding/cutting said consolidated sheet into parallelepipeds, preferably cubes (Column 3, Lines 30-40). Thus, all of the surfaces of the jaspe agglomerated particles are not irregular and one of ordinary skill in the art at the time of the invention would not have found it obvious to modify the method and article of Lemoine to include the claimed contour of the surfaces of jaspe agglomerated particles.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

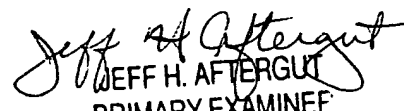
**Conclusion**

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Justin R. Fischer** whose telephone number is **(571) 272-1215**. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Dunn can be reached on (571) 272-1171. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Justin Fischer

  
JEFF H. AFTERGUT  
PRIMARY EXAMINER  
GROUP 1300

September 16, 2005